



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2021-0395; FRL-9563-01-R4]

#### Air Plan Approval; Kentucky; Emissions Statement Requirements for the 2015 8-Hour

#### Ozone Standard Nonattainment Areas

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted to EPA by the Commonwealth of Kentucky through the Kentucky Division for Air Quality (KDAQ) on October 15, 2020. The proposed changes were submitted by KDAQ to address the emissions statement requirements for the 2015 8-hour ozone national ambient air quality standards (NAAQS) for Kentucky counties in the Cincinnati, Ohio-Kentucky 2015 8-hour ozone NAAQS nonattainment area (Cincinnati, OH-KY Area), and for some of the Kentucky counties in the Louisville, Kentucky-Indiana 2015 8-hour ozone NAAQS nonattainment area (Louisville, KY-IN Area). Specifically, EPA is proposing to approve the emissions statement requirements for portions of Boone, Campbell, and Kenton Counties in the Cincinnati, OH-KY Area, and Bullitt and Oldham Counties in the Louisville, KY-IN Area. EPA will consider and take action, or has considered and taken action, on submissions addressing the emissions statement requirements for the remaining counties in these two nonattainment areas, including the Jefferson County, Kentucky portion of the Louisville, KY-IN Area, in separate rulemakings. EPA is proposing approval pursuant to the Clean Air Act (CAA or Act).

**DATES:** Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2021-0395 at [www.regulations.gov](http://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit [www2.epa.gov/dockets/commenting-epa-dockets](http://www2.epa.gov/dockets/commenting-epa-dockets).

**FOR FURTHER INFORMATION CONTACT:** Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9088. Ms. Bell can also be reached via electronic mail at [bell.tiereny@epa.gov](mailto:bell.tiereny@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On October 1, 2015, EPA promulgated a revised 8-hour primary and secondary ozone NAAQS, strengthening both from 0.075 parts per million (ppm) to 0.070 ppm (the 2015 8-hour Ozone NAAQS). *See* 80 FR 65292. The 2015 8-hour ozone NAAQS is set at 0.070 ppm based on an annual fourth-highest daily maximum 8-hour average concentration averaged over three years. Under EPA's regulations at 40 CFR part 50, the 2015 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.070 ppm. *See* 40 CFR 50.19. Ambient air

quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percentage of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined using Appendix U of part 50.

Upon promulgation of a new or revised ozone NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data at the conclusion of the designation process. On June 4, 2018 (effective August 3, 2018), EPA designated the 7-county Cincinnati, OH-KY Area as a Marginal ozone nonattainment area for the 2015 8-hour ozone NAAQS.<sup>1</sup> Also on June 4, 2018 (effective August 3, 2018), EPA designated the 5-county Louisville, KY-IN Area as a Marginal ozone nonattainment area for the 2015 8-hour ozone NAAQS.<sup>2</sup> The Cincinnati, OH-KY Area and the Louisville, KY-IN Area were designated nonattainment for the 2015 8-hour Ozone NAAQS using 2014-2016 ambient air quality data. *See* 83 FR 25776.

On December 6, 2018, EPA finalized a rule entitled “Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements” (SIP Requirements Rule) that establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2015 8-hour ozone NAAQS.<sup>3</sup> *See* 83 FR 62998. This rule establishes nonattainment area attainment dates based on Table 1 of section 181(a) of the CAA,

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<sup>1</sup> The Cincinnati, OH-KY Area consists of the following counties: Boone (Partial), Campbell (Partial), Kenton (Partial), in Kentucky and the entire counties of Butler, Clermont, Hamilton, and Warren in Ohio. EPA has taken action on the 2015 8-hour ozone NAAQS nonattainment area emissions statement requirements for the entire counties of Butler, Clermont, Hamilton, and Warren in Ohio in a separate action. *See* 86 FR 12270 (March 3, 2021).

<sup>2</sup> The Louisville, KY-IN Area consists of Bullitt, Jefferson, and Oldham Counties in Kentucky and Clark and Floyd Counties in Indiana. EPA has proposed action on the 2015 8-hour ozone NAAQS emissions statement requirements for the Jefferson County, Kentucky portion of the Louisville, KY-IN area in a separate proposed rulemaking, *see* 87 FR 2101 (January 13, 2022), and will take action on the emissions statement requirements for Clark and Floyd Counties in Indiana in a separate rulemaking.

<sup>3</sup> The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2015 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress, reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and compliance with emission control measures in the SIP.

including an attainment date three years after the August 3, 2018, designation effective date, for areas classified as Marginal for the 2015 8-hour ozone NAAQS.

Ground level ozone is not emitted directly into the air but is created by chemical reactions between oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOC) in the presence of sunlight. Emissions from industrial facilities and electric utilities, motor vehicle exhaust, gasoline vapors, and chemical solvents are some of the major sources of NO<sub>x</sub> and VOC. Section 182(a)(3)(B) of the CAA requires states with ozone nonattainment areas to submit a SIP revision requiring annual emissions statements to be submitted to the state by the owner or operator of each NO<sub>x</sub> and VOC stationary source. However, a state may waive the emissions statement requirement for any class or category of stationary sources which emit less than 25 tons per year (tpy) of VOC or NO<sub>x</sub> if the state provides an inventory of emissions as required by CAA section 182 that accounts for emissions from those sources. *See* CAA section 182(a)(3)(B)(ii). The first statement is due three years from the area's nonattainment designation, and subsequent statements are due at least annually thereafter.

Based on the nonattainment designation, Kentucky was required to develop a SIP revision satisfying, among other things, CAA section 182(a)(3)(B). On October 15, 2020,<sup>4</sup> Kentucky submitted a SIP revision addressing the emissions statement requirements related to the 2015 8-hour ozone NAAQS for the Kentucky portion of the Cincinnati, OH-KY Area and for Bullitt and Oldham Counties in the Kentucky portion of the Louisville, KY-IN Area. EPA is proposing to approve the October 15, 2020, SIP submittal as meeting the requirements of section 182(a)(3)(B) of the CAA and associated federal regulations. EPA's analysis of the SIP revision and how it addresses the emissions statement requirements is discussed in the next section of this notice.

## **II. Analysis of the Commonwealth's Submittal**

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<sup>4</sup> KDAQ's transmittal letter for the October 15, 2020, SIP revision was dated October 15, 2020, and submitted to EPA on October 16, 2020.

As discussed above, section 182(a)(3)(B) of the CAA requires states to submit a SIP revision requiring the owner or operator of each NO<sub>x</sub> and VOC stationary source located in an ozone nonattainment area to submit to the state annual emissions statements. The first statement is due three years from the area's nonattainment designation, and subsequent statements are due at least annually thereafter.

Due to previous nonattainment ozone designations, Kentucky has an existing emissions statement program. The October 15, 2020, SIP revision includes Kentucky's certification that the following SIP-approved regulations contain provisions that meet the emissions statement requirements of CAA section 182(a)(3)(B) for the 2015 8-hour ozone NAAQS and that the Commonwealth continues to operate under these approved provisions: 401 Kentucky Administrative Regulations (KAR) 52:020, Sections 22 and 23; 401 KAR 52:030, Sections 3 and 22; 401 KAR 52:040 Section 3; and 401 KAR 52:070 Section 3.<sup>5</sup> On January 28, 2016, EPA approved Kentucky's emissions statement program, which applies to sources located in ozone nonattainment areas.<sup>6</sup> *See* 81 FR 4896. The regulatory sections identified in the October 15, 2020 submittal require sources that emit 25 tons per year or more of VOC or NO<sub>x</sub> within the Kentucky portion of the Cincinnati, OH-KY Area and the Kentucky portion of the Louisville, KY-IN Area, not including Jefferson County, to submit annual certified statements showing actual VOC and NO<sub>x</sub> emissions. EPA has preliminarily determined that the specific regulatory sections identified in the October 15, 2020, submittal, collectively, coupled with the waiver for stationary sources emitting less than 25 tpy of NO<sub>x</sub> or VOC discussed in the two paragraphs below, meet the emissions statement requirements of section 182(a)(3)(B).

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<sup>5</sup> EPA notes that, in addition to the provisions identified in Kentucky's October 15, 2020, SIP revision, the following are also SIP-approved and apply to ozone nonattainment areas: the entirety of 401 KAR 52:030; and relevant provisions of 401 KAR 52:040, Sections 20 and 21. *See* 81 FR 4896 (January 28, 2016).

<sup>6</sup> EPA's 2016 approval of Kentucky's emissions statement program pertained to the Kentucky portion of the 2008 Cincinnati, OH-KY Area, but the Kentucky regulations approved in that 2016 action apply to all ozone nonattainment areas in Kentucky's jurisdiction, which include the counties and partial counties in the 2015 Cincinnati, OH-KY and Louisville, KY-IN Areas that are within Kentucky's jurisdiction.

As allowed by CAA section 182(a)(3)(B)(ii), Kentucky waived the emissions statement requirements for stationary sources emitting less than 25 tpy of NO<sub>x</sub> or VOC. CAA section 182(a)(3)(B)(ii) allows a state to waive the application of emissions statements requirements to any class or category of stationary sources which emit less than 25 tons per year of VOC or NO<sub>x</sub> if the state, in its submissions under section 182(a)(1) or 182(a)(3)(A), provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the Administrator or other methods acceptable to the Administrator.

Pursuant to CAA section 182(a)(3)(A), Kentucky is required to submit a revised inventory meeting the requirements of section 182(a)(1) at the end of each 3-year period after submission of the inventory under section 182(a)(1) until the Cincinnati, OH-KY Area and the Louisville, KY-IN Area are redesignated to attainment. CAA section 182(a)(1) requires the submission of a comprehensive, accurate, current inventory of actual emissions from all sources, as described in CAA section 172(c)(3), in accordance with guidance provided by EPA.<sup>7</sup> To comply with CAA section 182(a)(3)(A)'s requirement to submit periodic emissions inventories, Kentucky submits NO<sub>x</sub> and VOC emissions data to EPA's National Emissions Inventory (NEI)<sup>8</sup> consistent with 83 FR 62998, "Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements," and 40 CFR 51.1315. That emissions data includes small stationary sources (namely, those emitting less than 25 tpy of NO<sub>x</sub> or VOC) in accordance with CAA section 182(a)(3)(B)(ii).

For the reasons discussed above, EPA has preliminarily determined that Kentucky's emissions statement regulations meet the requirements under CAA section 182(a)(3)(B) and the SIP Requirements Rule for the 2015 8-hour ozone NAAQS for the entire Kentucky portion of

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<sup>7</sup> CAA section 172(c)(3) states, "Such plan provisions shall include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area including such periodic revisions as the Administrator may determine necessary to assure that the requirements of this part are met."

<sup>8</sup> To access EPA's NEI, please visit: U.S. EPA, *National Emissions Inventory (NEI)*, <https://www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei>.

the Cincinnati, OH-KY Area and the Bullitt County, Kentucky and Oldham County, Kentucky portion of the Louisville, KY-IN Area.

### **III. Proposed Action**

EPA is proposing to approve Kentucky's October 15, 2020, SIP revision addressing the emissions statement requirements for the 2015 8-hour ozone NAAQS for portions of Boone, Campbell, and Kenton Counties in the Cincinnati, OH-KY 2015 8-hour ozone nonattainment area, and Bullitt and Oldham Counties in the Louisville, KY-IN 2015 8-hour ozone nonattainment area. EPA is proposing to find that the Commonwealth's submission meets the requirements of sections 110 and 182 of the CAA.

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: February 17, 2022.

Daniel Blackman,  
*Regional Administrator,*  
*Region 4.*



